

1 **BEFORE THE ARIZONA STATE BOARD OF BEHAVIORAL HEALTH EXAMINERS**

2 **In the Matter of:**

3 **Richard L. Smith, LISAC-0442,**
4 **Licensed Independent Substance Abuse**
5 **Counselor,**
6 **In the State of Arizona.**

7 **RESPONDENT**

CASE NO. 2021-0070


RELEASE FROM
CONSENT AGREEMENT AND ORDER

8 The Board received a request from Respondent to release them from the terms and
9 conditions of the Consent Agreement and Order dated June 28th, 2021. After consideration, the
10 Board voted to release Respondent from the terms and conditions of the Consent Agreement
11 and Order dated June 28th, 2021.

12 **ORDER**

13 **GOOD CAUSE APPEARING, IT IS THEREFORE ORDERED THAT:**

14 Respondent is hereby released from all terms and conditions of the Consent Agreement
15 and Order dated June 28th, 2021.

16 By: 
17 **TOBI ZAVALA, Executive Director**
Arizona Board of Behavioral Health Examiners

Jun 13, 2022
Date

18 **ORIGINAL** of the foregoing filed **Jun 13, 2022**
19 with:

20 Arizona Board of Behavioral Health Examiners
21 1740 West Adams Street, Suite 3600
Phoenix, AZ 85007

22 **EXECUTED COPY** of the foregoing sent electronically **Jun 13, 2022**
23 to:

24 Richard L. Smith
Address of Record
Respondent

25 Andrew R. Breavington
One Renaissance Square

1 2 North Central Avenue, Suite 1450
Phoenix, AZ 85004
2 Attorney for Respondent

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CASE NO. 2021-0070
CONSENT AGREEMENT

9 In the interest of a prompt and speedy settlement of the above captioned matter,
10 consistent with the public interest, statutory requirements and responsibilities of the Arizona
11 State Board of Behavioral Health Examiners (“Board”), and pursuant to A.R.S. §§ 32-3281(F)
12 and 41-1092.07(F)(5), Richard L. Smith (“Respondent”) and the Board enter into this Consent
13 Agreement, Findings of Fact, Conclusions of Law and Order (“Consent Agreement”) as a final
14 disposition of this matter.

15 **RECITALS**

16 Respondent understands and agrees that:

17 1. Any record prepared in this matter, all investigative materials prepared or
18 received by the Board concerning the allegations, and all related materials and exhibits may be
19 retained in the Board’s file pertaining to this matter.

20 2. Respondent has the right to a formal administrative hearing at which Respondent
21 can present evidence and cross examine the State’s witnesses. Respondent hereby irrevocably
22 waives their right to such formal hearing concerning these allegations and irrevocably waives
23 their right to any rehearing or judicial review relating to the allegations contained in this Consent
24 Agreement.

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1 3. Respondent has the right to consult with an attorney prior to entering into this
2 Consent Agreement.

3 4. Respondent acknowledges and agrees that upon signing this Consent
4 Agreement and returning it to the Board's Executive Director, Respondent may not revoke their
5 acceptance of this Consent Agreement or make any modifications to it. Any modification of this
6 original document is ineffective and void unless mutually approved by the parties in writing.

7 5. The findings contained in the Findings of Fact portion of this Consent Agreement
8 are conclusive evidence of the facts stated herein between only Respondent and the Board for
9 the final disposition of this matter and may be used for purposes of determining sanctions in any
10 future disciplinary matter.

11 6. This Consent Agreement is subject to the Board's approval, and will be effective
12 only when the Board accepts it. In the event the Board in its discretion does not approve this
13 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,
14 nor shall it be relied upon or introduced in any disciplinary action by any party hereto, except
15 that Respondent agrees that should the Board reject this Consent Agreement and this case
16 proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its
17 review and discussion of this document or of any records relating thereto.

18 7. Respondent acknowledges and agrees that the acceptance of this Consent
19 Agreement is solely to settle this Board matter and does not preclude the Board from instituting
20 other proceedings as may be appropriate now or in the future. Furthermore, and
21 notwithstanding any language in this Consent Agreement, this Consent Agreement does not
22 preclude in any way any other state agency or officer or political subdivision of this state from
23 instituting proceedings, investigating claims, or taking legal action as may be appropriate now or
24 in the future relating to this matter or other matters concerning Respondent, including but not

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1 limited to violations of Arizona's Consumer Fraud Act. Respondent acknowledges that, other
2 than with respect to the Board, this Consent Agreement makes no representations, implied or
3 otherwise, about the views or intended actions of any other state agency or officer or political
4 subdivision of the state relating to this matter or other matters concerning Respondent.

5 8. Respondent understands that once the Board approves and signs this Consent
6 Agreement, it is a public record that may be publicly disseminated as a formal action of the
7 Board, and that it shall be reported as required by law to the National Practitioner Data Bank.

8 9. Respondent further understands that any violation of this Consent Agreement
9 constitutes unprofessional conduct pursuant to A.R.S. § 32-3251(16)(n) and may result in
10 disciplinary action pursuant to A.R.S. § 32-3281.

11 10. The Board therefore retains jurisdiction over Respondent and may initiate
12 disciplinary action against Respondent if it determines that they have failed to comply with the
13 terms of this Consent Agreement or of the practice act.

14 The Board issues the following Findings of Fact, Conclusions of Law and Order:

15 **FINDINGS OF FACT**

16 1. Respondent is the holder of License No. LISAC-0442 for the practice of
17 Substance Abuse Counseling in the state of Arizona.

18 2. Respondent has been providing behavioral health services in a private practice
19 setting for nearly 30 years.

20 3. From 02/20 – 05/20, Respondent provided services to an adult female client
21 ("Client").

22 4. Client's 02/20 consent for treatment was missing numerous required elements,
23 including the purpose for treatment.

24 5. Respondent did not prepare a treatment plan for Client.

25 6. Client's records were missing all the required telepractice elements:

1 7. Based on the deficiencies uncovered in Client's clinical record, Board staff
2 reviewed the clinical records of four (4) random clients.

3 8. After reviewing approximately 10% of Respondent's current caseload, Board staff
4 discovered the following:

5 a. Consent for treatment:

- 6 • All but one (1) client did not have a consent for treatment at the time
7 therapy began.
- 8 • The one (1) consent for treatment was missing numerous required
9 elements.
- 10 • At the conclusion of Board staff's investigation, one (1) client still did not
11 have a consent for treatment.

12 b. Treatment plan:

- 13 • Not a single client had a treatment plan until months, and in one case
14 years after beginning therapy.
- 15 • Respondent did not prepare these treatment plans until he received this
16 Board complaint.
- 17 • At the conclusion of Board staff's investigation, one (1) client still did not
18 have a treatment plan.

19 c. Telepractice:

- 20 • Not a single client record contained all the required telepractice elements.

21 9. Respondent made the following statements during his investigative interview:

- 22 a. Respondent cannot guarantee 100% of his clients would have signed an
23 informed consent prior to initiation of services.
- 24 b. Respondent did not know every clinical record needed a treatment plan.
- 25 c. Respondent used the progress notes as a treatment plan.

- d. Respondent has never done treatment plans for private practice clients.
- e. Respondent felt dialogue with the client each session was a treatment plan.
- f. Respondent now understands the importance of treatment plans and has implemented them with clients since receiving the Board complaint.
- g. Prior to the Board complaint, Respondent was aware that all clients needed a signed informed consent prior to beginning services.

10 10 Despite being licensed since 2004 and having spent nearly 30 years in a private practice setting, Respondent was not aware of the basic requirements of informed consent documentation and treatment plans.

11 11. Although Respondent represented he understood clients needed a signed informed consent prior to the initiation of services, Respondent began treating multiple clients without an informed consent.

CONCLUSIONS OF LAW

14 1. The Board has jurisdiction over Respondent pursuant to A.R.S. § 32-3251 *et seq.* and the rules promulgated by the Board relating to Respondent’s professional practice as a licensed behavioral health professional.

17 2. The conduct and circumstances described in the Findings of Fact constitute a violation of A.R.S. § 32-3251(16)(q), failing or refusing to maintain adequate records of behavioral health services provided to a client.

20 3. The conduct and circumstances described in the Findings of Fact constitute a violation of A.R.S. § 32-3251(16)(p), failing to conform to minimum practice standards as developed by the board, as it relates to:

- A.A.C. R4-6-1101, Consent for Treatment
- A.A.C. R4-6-1102, Treatment Plan
- A.A.C. R4-6-1106, Telepractice

1 **ORDER**

2 Based upon the foregoing Findings of Fact and Conclusions of Law, the parties agree to
3 the provisions and penalties imposed as follows:

4 1. Respondent's license, LISAC-0442, will be placed on probation for 12 months,
5 effective from the date of entry as signed below.

6 2. Respondent shall not practice under their license, LISAC-0442, unless they are
7 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
8 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
9 shall immediately notify the Board in writing and shall not practice under their license until they
10 submit a written request to the Board to re-commence compliance with this Consent Agreement.
11 All such requests shall be pre-approved by the Board Chair or designee.

12 3. In the event that Respondent is unable to comply with the terms and conditions
13 of this Consent Agreement, all remaining time frames shall be tolled and remain tolled until
14 such time as they are granted approval to re-commence compliance with the Consent
15 Agreement.

16 **Continuing Education**

17 4. In addition to the continuing education requirements of A.R.S. § 32-3273, within
18 12 months of the effective date of this Consent Agreement, Respondent shall complete 6 clock
19 hours of the NASW Staying Out of Trouble continuing education course or an equivalent course
20 addressing current behavioral health documentation standards in Arizona. All required
21 continuing education shall be pre-approved by the Board Chair or designee. Upon completion,
22 Respondent shall submit a certificate of completion of the required continuing education.

23 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within
24 12 months of the effective date of this Consent Agreement, Respondent shall complete 3

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1 contact hours in documentation standards and best practice, pre-approved by the Board Chair
2 or designee. Upon completion, Respondent shall submit a certificate of completion of the
3 required continuing education.

4 6. In addition to the continuing education requirements of A.R.S. § 32-3273, within
5 12 months of the effective date of this Consent Agreement, Respondent shall complete 3 clock
6 hours of the Board's Arizona Statutes and Regulations Tutorial. Upon completion, Respondent
7 shall submit a certificate of completion of the required continuing education.

8 **Early Release**

9 7. After completion of the continuing education requirements set forth in this
10 Consent Agreement, Respondent may request early release from the Consent Agreement if all
11 other terms of the Consent Agreement have been met.

12 **GENERAL PROVISIONS**

13 **Provision of Clinical Supervision**

14 8. Respondent shall not provide clinical supervision while subject to this Consent
15 Agreement.

16 **Civil Penalty**

17 9. Subject to the provisions set forth in paragraph 10, the Board imposes a civil
18 penalty against the Respondent in the amount of \$1,000.00.

19 10. Respondent's payment of the civil penalty shall be stayed so long as Respondent
20 remains compliant with the terms of this Consent Agreement. If Board staff determines that
21 Respondent is noncompliant with the terms of this Consent Agreement in any respect, with the
22 exception of the tolling provision under paragraph 3, the stay of the civil penalty payment shall
23 be automatically lifted and payment of the civil penalty shall be made by certified check or
24 money order payable to the Board within 30 days after being notified in writing of the lifting of
25 the stay.

1 11. Within 10 days of being notified of the lifting of the stay, Respondent may request
2 that the matter be reviewed by the Board for the limited purpose of determining whether the
3 automatic lifting of the stay was supported by clear and convincing evidence. If the Board
4 receives the written request within 10 days or less of the next regularly scheduled Board
5 meeting, the request will not be heard at that meeting, but will be heard at the next regularly
6 scheduled Board meeting. The Board's decision on this matter shall not be subject to further
7 review.

8 12. The Board reserves the right to take further disciplinary action against
9 Respondent for noncompliance with this Consent Agreement after affording Respondent notice
10 and an opportunity to be heard. If a complaint is filed against Respondent for failure to comply
11 with this Consent Agreement, the Board shall have continuing jurisdiction until the matter is final
12 and the period of probation shall be extended until the matter is final.

13 13. If Respondent currently sees clients in their own private practice, and obtains any
14 other type of behavioral health position, either as an employee or independent contractor, where
15 they provide behavioral health services to clients of another individual or agency, they shall
16 comply with requirements set forth in paragraphs 14 through 16 below.

17 14. Within 10 days of the effective date of this Order, if Respondent is working in a
18 position where Respondent provides any type of behavioral health related services or works in a
19 setting where any type of behavioral health, health care, or social services are provided,
20 Respondent shall provide the Board Chair or designee with a signed statement from
21 Respondent's employer(s) confirming Respondent provided the employer(s) with a copy of this
22 Consent Agreement. If Respondent does not provide the employer's statement to the Board
23 within 10 days of the effective date, the Board will provide Respondent's employer(s) with a
24 copy of the Consent Agreement.

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1 15. If Respondent is not employed as of the effective date of this Order, within 10
2 days of accepting employment in a position where Respondent provides any type of behavioral
3 health related services or in a setting where any type of behavioral health, health care, or social
4 services are provided, Respondent shall provide the Board Chair or designee with a written
5 statement providing the contact information of their new employer and a signed statement from
6 Respondent's new employer confirming Respondent provided the employer with a copy of this
7 Consent Agreement. If Respondent does not provide the employer's statement to the Board
8 within 10 days, as required, Respondent's failure to provide the required statement to the Board
9 shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide Respondent's
10 employer(s) with a copy of the Consent Agreement.

11 16. If, during the period of Respondent's probation, Respondent changes
12 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
13 extended leave of absence for whatever reason that may impact their ability to timely comply
14 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
15 the Board of their change of employment status. After the change and within 10 days of
16 accepting employment in a position where Respondent provides any type of behavioral health
17 related services or in a setting where any type of behavioral health, health care, or social
18 services are provided, Respondent shall provide the Board Chair or designee a written
19 statement providing the contact information of their new employer(s) and a signed statement
20 from Respondent's new employer(s) confirming Respondent provided the employer(s) with a
21 copy of this Consent Agreement. If Respondent does not provide the employer's statement to
22 the Board within 10 days, as required, Respondent's failure to provide the required statement to
23 the Board shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide
24 Respondent's employer(s) with a copy of the Consent Agreement.

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1 17. Respondent shall practice behavioral health using the name under which they
2 are licensed. If Respondent changes their name, they shall advise the Board of the name
3 change as prescribed under the Board's regulations and rules.

4 18. Prior to the release of Respondent from probation, Respondent must submit a
5 written request to the Board for release from the terms of this Consent Agreement at least 30
6 days prior to the date they would like to have this matter appear before the Board. Respondent
7 may appear before the Board, either in person or telephonically. Respondent must provide
8 evidence that they have successfully satisfied all terms and conditions in this Consent
9 Agreement. The Board has the sole discretion to determine whether all terms and conditions of
10 this Consent Agreement have been met and whether Respondent has adequately demonstrated
11 that they have addressed the issues contained in this Consent Agreement. In the event that the
12 Board determines that any or all terms and conditions of this Consent Agreement have not been
13 met, the Board may conduct such further proceedings as it determines are appropriate to
14 address those matters.

15 19. Respondent shall bear all costs relating to probation terms required in this
16 Consent Agreement.

17 20. Respondent shall be responsible for ensuring that all documentation required in
18 this Consent Agreement is provided to the Board in a timely manner.

19 21. This Consent Agreement shall be effective on the date of entry below.

20 22. This Consent Agreement is conclusive evidence of the matters described herein
21 and may be considered by the Board in determining appropriate sanctions in the event a
22 subsequent violation occurs.

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1 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

2 *RICHARD L. SMITH LUISAC*
RICHARD L. SMITH LUISAC (Jun 28, 2021 10:49 PDT)

3 Richard L. Smith

Jun 28, 2021

Date

4 **BOARD ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

5 By: *M. Zavalala*

6 TOBI ZAVALA, Executive Director
7 Arizona Board of Behavioral Health Examiners

Jun 28, 2021

Date

8 **ORIGINAL** of the foregoing filed Jun 28, 2021
9 with:

10 Arizona Board of Behavioral Health Examiners
11 1740 West Adams Street, Suite 3600
Phoenix, AZ 85007

12 **EXECUTED COPY** of the foregoing sent electronically Jun 28, 2021
13 to:

14 Mona Baskin
15 Assistant Attorney General
2005 North Central Avenue
Phoenix, AZ 85004

16 Richard L. Smith
17 Address of Record
Respondent

18 Andrew R. Breavington
19 One Renaissance Square
2 North Central Avenue, Suite 1450
20 Phoenix, AZ 85004
Attorney for Respondent